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8 Attorneys for Defendant LAW OFFICE OF  
9 DANIEL J. HORWITZ

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA DISTRICT OF CALIFORNIA

12 ERICA WELKER,

13 Plaintiff,

14 v.

15 LAW OFFICE OF DANIELJ.  
16 HORWITZ,

17 Defendant.

CASE NO. 08-CV-2259-MMA-WMc

NOTICE OF MOTION AND MOTION TO  
DISMISS COMPLAINT PURSUANT TO  
FRCP 12 (B) (6) AND CALIFORNIA  
ANTI-SLAPP LEGISLATION; REQUEST  
FOR FEES AND COSTS

Date: March 20, 2009

Time: 2:30

Crtrm: 5

Judge: Hon. Michael Anello

18 **TO: PLAINTIFF AND HER ATTORNEYS OF RECORD**

19 **PLEASE TAKE NOTICE** that on March 20, 2009, at 2:30 p.m., or  
20 as soon as the matter may be heard in Courtroom 5 of this Court, located  
21 at 940 Front Street, San Diego, California 92101, the Honorable Michael  
22 M. Anello presiding, Defendant LAW OFFICE OF DANIEL J. HORWITZ  
23 ("Horwitz") will and hereby does move this Court for an Order, pursuant  
24 to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the  
25 Federal Fair Debt Collection Practices Act Claim (hereinafter "FDCPA"),  
26 in the first Claim for Relief as well as the California state law claim  
27 asserted by Plaintiff in the Second Claim for Relief contained in the  
28 Complaint filed herein.

LAW OFFICES  
**MULVANEY, KAHAN & BARRY**  
 A LIMITED LIABILITY PARTNERSHIP  
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This Motion is made on the grounds that the state law claim under California Civil Code §§ 1788, *et seq.* ("Rosenthal Act"), fails because it is based upon alleged communications made in connection with a state court collection action and, therefore, barred by the litigation privilege codified at California Civil Code § 47. This Motion is also based on the complete failure to properly allege claims under the FDCPA and the fact that no violation can be stated. The Motion further seeks an award of fees and costs under California's Anti-SLAPP legislation codified at Code of Civil Procedure Section 425.16 *et. seq.* as well as the mandate of the FDCPA at 15 U.S.C. Section 1692k(a)(3) for baseless claims. The undersigned counsel received the case assignment from Horwitz in late December, 2008.

This Motion will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of the Motion, the Declaration of Daniel J. Horwitz and all exhibits appended thereto, upon all of the records on file in this action, and upon such other and further evidence or argument that the Court may permit at the hearing in this matter.

DATED: January 20, 2009

MULVANEY, KAHAN & BARRY

By: /s/ John A. Mayers  
 John A. Mayers, Esq  
 Attorneys for Defendant LAW  
 OFFICE OF DANIEL J. HORWITZ